

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LACIE SMITH,
SKYE CONIBEAR, and ANASTATIA
CONIBEAR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA SMITH,

Respondent-Appellant,
and

DAVID SMITH and CHARLES CONIBEAR,

Respondents.

In the Matter of SKYE CONIBEAR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES CONIBEAR,

Respondent-Appellant,
and

MELISSA SMITH,

Respondent.

UNPUBLISHED
September 11, 2003

No. 246189
Muskegon Circuit Court
Family Division
LC No. 01-030274-NA

No. 246322
Muskegon Circuit Court
Family Division
LC No. 01-030274-NA

In the Matter of JESSICA CONIBEAR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA SMITH,

Respondent-Appellant,

and

CHARLES CONIBEAR,

Respondent.

No. 246917
Muskegon Circuit Court
Family Division
LC No. 01-030274-NA

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondent Melissa Smith appeals as of right from the trial court orders terminating her parental rights to Lacie Smith, Skye Conibear, and Anastatia Conibear under MCL 712A.19b(3)(c)(i) and (g), and her parental rights to Jessica Conibear under MCL 712A.19b(3)(c)(i), (g), (i), and (j). Respondent Charles Conibear appeals as of right from the trial court order terminating his parental rights to Skye Conibear under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent-mother contends that the trial court clearly erred in finding that at least one statutory ground for termination was established by clear and convincing evidence.¹ We disagree. The evidence presented clearly established that despite respondent-mother's intent, she failed to provide proper care and custody for her children and there was no reasonable expectation that she would be able to do so within a reasonable amount of time given their ages.² Respondent-mother's home was infested with vermin and did not comply with the city's building code. In fact, Lacie, Skye, and Anastatia, had ringworm and lice when they were originally taken into custody. We also note the trial court's comments regarding respondent's personal

¹ MCR 5.974(I) (Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new subchapter 3.900. In this opinion, we refer to the rules in effect at the time of the orders terminating parental rights.); *In re Sours Minors*, 459 Mich 624, 641; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

² MCL 712A.19b(3)(g).

hygiene throughout these proceedings. While respondent-mother claimed that she was living in a two-bedroom apartment during the January 16, 2003, termination hearing, caseworker Kim Sutton testified that she knew respondent-mother moved but that respondent-mother never provided her with a current address.

Additionally, the record shows that respondent-mother often delegated the care of the children to a family friend. She failed to make any substantial progress under the parent-agency agreement. At the time of trial, respondent-mother had not obtained employment, applied for Supplemental Security Income (SSI), attended parenting classes, or attended counseling sessions. Further, because no progress had been made in remedying the conditions leading to the adjudication of Jessica's siblings, the trial court correctly concluded that newborn Jessica would be harmed if returned to respondent-mother's care.³ We note that respondent-father does not challenge the sufficiency of the evidence relied upon in terminating his parental rights.

Respondents next assert that the trial court improperly ruled that Lacie's hearsay statements alleging sexual abuse were admissible. We need not address this claim as there was sufficient evidence to support the termination of respondents' parental rights on the basis of neglect.⁴ Nevertheless, the record shows that the trial court acted within its discretion because the statements possessed the requisite indicia of truthfulness and were supported by the results of the Child Sexual Behavior Inventory.⁵

For the same reason, it is unnecessary to address respondent-mother's unpreserved claim that her constitutional right to confrontation was violated when Lacie's forensic interview was not taped. We note, however, that the trial court ensured the reliability of Lacie's statements by applying the truthfulness and corroboration requirements of MCR 5.972(C)(2).⁶ These statements were then subjected to rigorous adversarial testing at the motion hearing through cross-examination.

Respondent-father argues that his due process right to notice was violated when notice of the termination hearing was effected by publication. We disagree. Until commencement of the termination hearing, respondent-father's address was unknown by everyone except David Smith's attorney. Indeed, there was evidence that respondent-father deliberately concealed his whereabouts. On this record we find that service by publication was appropriate.

We also find no merit to respondent-father's argument that his due process right to notice and an opportunity to be heard was violated by the trial court's failure to specifically find that he was the natural father of Anastatia and Jessica. This issue was not preserved below and therefore our review is limited to plain error affecting respondent-father's substantial rights.⁷ Respondent-

³ MCL 712A.19b(3)(i) and (j).

⁴ See *In re Sours Minors*, *supra* at 641.

⁵ See MCR 5.972(C)(2); *People v Smith*, 456 Mich 543, 549-550; 581 NW2d 654 (1998).

⁶ See *Maryland v Craig*, 497 US 836, 849-851; 110 S Ct 3157; 111 L Ed 2d 666 (1990).

⁷ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

father is only a parent or respondent in these proceedings with regard to Skye.⁸ Because respondent-father was accorded all due process rights with regard to Skye's termination proceeding, which was one and the same as Anastatia's, his claim that he was not afforded notice and an opportunity to be heard with regard to Anastatia is erroneous.

With respect to Jessica's subsequent termination proceeding, we also find no error requiring reversal. Respondent-father was free to establish paternity of Jessica between the time of her birth on June 10, 2002, and the termination hearing on January 16, 2003, but he failed to do so. Even if respondent-father had been found to have parental rights to Jessica, and accorded notice and an opportunity to be heard, his parental rights would certainly have been terminated. Jessica's initial disposition was a termination proceeding and the trial court was well aware of the facts of the first termination case in which respondent-father completely failed to comply with the parent-agency agreement. It also appears from the record that respondent-father was provided notice of Jessica's termination hearing at his last known address. Therefore, no error affecting respondent-father's substantial rights occurred.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

⁸ MCR 5.903(A)(12); MCR 5.903(C)(8); MCR 5.974(B); *In re AMB*, 248 Mich App 144, 174; 640 NW2d 262 (2001).